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IN THE

Supreme Court of the United States

October Term, 1954

No. 357

CIRACO MANEJA, ET AL., *Petitioners*

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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WAIALUA AGRICULTURAL COMPANY, LIMITED, *Respondent*

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (Pet. App., pp. 1-81) is reported in 97 F. Supp. 198, and also in 10 WH Cases 287 and 20 Labor Cases ¶66,531.[1] The opinion of the Court of Appeals (Pet. App., pp. 83-105) is reported in

[1] The findings of fact and conclusions of law of the District Court, which are not reported, appear at R. 190-307 and 308-320. "R." as used herein refers to pages in the record printed in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court by Petitioner pursuant to Rule 21(4).

12 WH Cases 172 and 25 Labor Cases ¶68,404. The opinion of the Court of Appeals on Respondent's petition for rehearing (Pet. App., pp. 107-108) is reported in 12 WH Cases 254 and 26 Labor Cases ¶68,645. The opinion of the Court of Appeals in a prior proceeding is reported in 178 F. (2d) 603.

JURISDICTION

The judgment of the Court of Appeals herein was dated and entered on May 5, 1954 (Pet. App., p. 106). Respondent filed a timely petition for rehearing on June 2, 1954, which was denied by order dated and entered on June 24, 1954.[2] An order extending until September 22, 1954, the time within which Petitioners might file a petition for certiorari was entered by Mr. Justice Black on July 13, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The case arises under the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §201 *et seq.*), hereinafter called 'the Act'.[3] Pertinent provisions of the Act which are involved are set forth in the Appendix to the Petition, pp. 109-111. In addition, Sec. 3(c) defines "State" to mean—

> ". . . any State of the United States or the District of Columbia or any Territory or possession of the United States."

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[2] See Appendix to Petition for Certiorari filed by the Respondent herein in No. 358, present Term, p. 23.

[3] The Fair Labor Standards Amendments of 1949 (63 Stat. 910, effective January 25, 1950) made certain changes in Sections 3(b) and 3(j). No issue is presented herein under the 1949 Amendments, however, since this proceeding is solely concerned with application of the Act to employees in specified workweeks in 1946-1947 (Petition, p. 6; Pet. App., p. 5).

QUESTIONS PRESENTED

For reasons stated *infra* pp. 8-10, Respondent believes that the Petitioners have erroneously presented questions on the merits which are not appropriate for review, and have failed to present appropriately the fundamental jurisdictional basis of the judgment below in regard to their counterclaim; namely:

Where the District Court entertained Respondent's declaratory judgment suit as to the application of the Fair Labor Standards Act to Petitioners, and awarded damages to Petitioners on their counterclaim under Section 16(b) of the Act, whether the Court of Appeals, after reversing the District Court and directing dismissal of Respondent's suit because of alleged absence of a "case or controversy", erred in refusing on the same fundamental ground to review the merits of the judgment on the counterclaim.

STATEMENT OF THE CASE

Petitioners' statement of the case (Petition, pp. 4-13) is incomplete or inaccurate in many respects. The relevant background of this litigation is set forth in the Petition for Certiorari filed by Respondent herein in No. 358, present Term, pp. 5-11, to which the Court is respectfully referred. In view of Petitioners' extended references to the facts and the merits, Respondent submits the following additional statement:

All material facts are set forth in a lengthy Stipulation of the parties.[1] Respondent operates a sugar plantation

[1] The portion of the Stipulation containing an overall description of Respondent's plantation and its operations is set forth in the record printed in the court below (R. 27-123, 129-178, 721-724). The entire Stipulation is set forth in the original transcript of record herein (pp. 32-864), which has been certified by the Court of Appeals under Rule 21(1).

on the island of Oahu. Since 1898 Respondent has been engaged almost exclusively in the growing, cultivating, and harvesting of sugar cane on land owned or leased by it (R. 31), and in the processing of such sugar cane into raw sugar and molasses on the plantation where grown (R. 30, 31, 32, 721). *Respondent processes no cane except that grown by itself on its plantation* (R. 84). Neither Respondent nor any of its employees, including the Petitioners, engages in any sugar refining operations (R. 32). Substantially all the land (9,663 acres) now devoted to sugar cane production has been owned or leased and used by Respondent for this purpose since 1910 (R. 33).

On its plantation Respondent prepares and plows the fields for the planting of sugar cane; plants sugar cane; ratoons the fields;[5] cultivates sugar cane; applies fertilizer to the cane fields; irrigates cane fields by a network of irrigation ditches and water storage reservoirs; harvests sugar cane; maintains a network of field roads (which criss-cross the cane-growing land (R. 35)) for the transportation by truck of labor, field supplies and equipment throughout the plantation; and transports sugar cane by a narrow-gauge railroad (which also criss-crosses the cane-growing land (R. 35)) from the fields where grown to Respondent's mill.[6] These integrated operations are more fully described in the Stipulation (R. 39-66).

Respondent's mill, located on its plantation (R. 38), grinds the sugar cane grown on its plantation into raw sugar and molasses. Respondent then loads the bagged

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[5] "Ratooning" refers to operations performed after a field is harvested to prepare it for the growing of another crop (R. 42).

[6] The parties have stipulated that the term "mill" means the building and equipment of the Respondent used in the actual processing of sugar cane into raw sugar, including cane carrier, cane cleaning plant and scales, crushing plant, boiling house, fireroom, power plant, sugar warehouse and molasses tanks, and all equipment therein (R. 31).

raw sugar and molasses for shipment to the continental United States or stores such products temporarily in the sugar warehouse or molasses tanks (R. 66-82, 84-85). Respondent's operations and the work of its employees are completed by loading the bagged raw sugar and the molasses into railroad cars owned and operated by an independent carrier at the site of the mill, and by pushing such cars from such site onto a nearby spur of the carrier (R. 31-32, 59).

Respondent has equipped and maintains complete service shops for prompt minor repairs and emergency work and major overhaul of field and processing machinery, equipment and facilities indispensable to its growing, harvesting and processing operations. These service repair shops are located on the plantation, in an area extending not more than 300 feet from the mill building proper (R. 94, 723).

The foregoing operations, and Petitioners' work therein, were highly integrated and interdependent. Sugar cane is very perishable and starts to deteriorate immediately after being cut. Consequently, it must move "continuously from field to crushing mill", there to be processed into raw sugar within a few hours after it is cut, so that it will not spoil (Pet. App., p. 90; R. 33). All of Respondent's cane-growing lands were operated as an integrated farming unit and single enterprise. Employees working in the fields moved from one area to another, depending upon the program of plowing, planting, irrigating, fertilizing, harvesting, etc. Respondent's growing, harvesting and processing of cane and the marketing of the raw sugar constitute one continuous and year-round operation (R. 35-36). Machinery breakdowns in the mill may result in a shutdown of the entire mill, which would necessitate a discontinuance of harvesting and transportation operations until mill repairs are complete. Breakdowns of harvesting machinery or of cane transportation

facilities in turn may result in a shutdown of the entire mill (R. 94).

Respondent owns and maintains 820 dwelling houses, all of which are located on the plantation (R. 120); and various facilities and services, including firewood, water, electricity, sewage disposal, street maintenance and cleaning, and recreational facilities, are provided the occupants of such dwelling houses (R. 118, 119). These dwelling houses are occupied by 3,373 persons, of whom 2,952 are employees and pensioners of Respondent and their families. The remaining 421 persons living in such houses are lessees and their families who are not employed by the Respondent and who either work off the plantation or who own, operate or are employed by independently controlled businesses within it (R. 120-121). No employee, including any of the Petitioners herein, is required as a condition of employment to live on the plantation or in plantation dwelling houses or to use any service or facility which Respondent furnishes or renders its employees (R. 120). The relationship between the Respondent and its employees by virtue of the occupancy of such houses, including each Petitioner herein, is that of landlord and tenant (R. 120).[7]

The District Court wrote a lengthy opinion (Pet. App., pp. 1-81), made findings as to each Petitioner (R. 190 *et seq.*, 308 *et seq.*), and entered a judgment (R. 321 *et seq.*). In substance the District Court held:

1. Each Petitioner was engaged in commerce or in the production of goods for commerce, within the meaning of Section 7(a) of the Act, during each workweek of the period in question (R. 322).

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[7] For the convenience of the Court, we have set forth in the Appendix, *infra*, pp. 24-26, a detailed summary of the various activities engaged in by each Petitioner.

2. Of all the activities in litigation (described *supra*, pp. 3-6), the agriculture exemption in Sec. 13(a)(6) exempted Petitioners only while engaged in preparation of land for planting, planting, ratooning, cultivating, fertilizing, irrigating, and the harvesting operation only up to the point where cars loaded with cut cane were moved from the fields on portable track to the fixed line of Respondent's narrow gauge railroad (Pet. App., pp. 46-48; R. 191-192, 194, 196, 198, 201, 308-310).

3. The Section 7(c) processing exemption exempted only Petitioners working in the mill building while operating processing machinery, repairing such machinery either during the time the mill was operating or during the weekend shut-down, or bagging, loading and shipping raw sugar (Pet. App., pp. 53-58; R. 213, 310-318).

4. If in any workweek a Petitioner performed work which was exempt from the overtime provisions of the Act by virtue of Section 13(a)(6) or Section 7(c), the exemptions would be lost in that workweek if the Petitioner also did any other work not so exempt, regardless of how insubstantial such other work was (R. 336).

The District Court awarded Petitioners judgment under the counterclaim for unpaid overtime compensation, liquidated damages, costs and attorney's fees (R. 336-338).

The Court of Appeals disapproved many of the essential findings by the District Court (e.g. Pet. App., pp. 84-85, 89-95, 101-102), and concluded that each Petitioner was totally exempt from the Act under the agriculture exemption in Section 13(a)(6) in each workweek covered by the litigation (Pet. App., pp. 84-85, 88-89, 90-93, 95, 98, 100 *et seq.*). The court accordingly did not deem it necessary to consider the processing exemption under Section 7(c) (Pet. App., p. 105 note 45). However, the court's opinion and judgment went off on the ground that the parties were in apparent collusion because they had stip-

ulated all material facts and because neither had contested the constitutional validity of the Act under the commerce clause as applied to the agricultural employment of Petitioners here involved (Pet. App., pp. 86, 99-100, 101-102, 107-108). The court thereupon ordered the judgment reversed with direction to dismiss the Respondent's declaratory judgment suit for alleged absence of a case or controversy (Pet. App., p. 106), but declined upon petition for rehearing to direct dismissal of the counterclaim (Pet. App., pp. 107-108).

ARGUMENT

I.

The Petition Improperly Presents Questions on the Merits Which Were Not Passed Upon by the Court of Appeals

1. Since the Court of Appeals did not pass upon the merits of the controversy between the parties, Petitioners' questions presenting issues on the merits are not appropriate for review. See *United States* v. *Ballard*, 322 U.S. 78, 88; *Aetna Casualty & Surety Co.* v. *Flowers*, 330 U.S. 464, 468; *Labor Board* v. *Pittsburgh S.S. Co.*, 337 U.S. 656, 661-662; *Polizzi* v. *Cowles Magazine Co.*, 345 U.S. 663, 666.

The District Court's judgment resolved the issues on the merits of both Respondent's declaratory judgment suit and Petitioners' counterclaim (R. 321-336, 336-338). The Court of Appeals, however, manifestly refused to rule directly on the merits of either suit or counterclaim. It remanded the declaratory judgment suit with direction to dismiss, on the fundamental ground that no case or controversy was presented because the parties were in "apparent collusion . . . in the attempt to obtain an advisory opinion upon constitutional questions" (Pet. App., pp. 86, 99-100, 107-108). As for the counterclaim, the Court of

Appeals reversed the money judgment entered thereon by the District Court; construed the counterclaim "as a petition also for declaratory relief"; and stated that the "entire cause", including the counterclaim, was "tainted by apparent collusion" (Pet. App., pp. 107-108). If the court's *dicta* referred to in the Petition (pp. 14-19) had truly reflected the court's "holding", the judgment actually entered should have reversed the District Court with direction to enter judgment *for* Respondent and *against* Petitioners.

2. The instant Petition does not present for review the fundamental ground upon which the Court of Appeals based its reversal of the District Court, as to the counterclaim as well as the declaratory judgment suit. Accordingly that fundamental ground is not before the Court under the Petition herein. See Rule 23(c); *Irvine v. California,* 347 U.S. 128, 129-130; *Mazer v. Stein,* 347 U.S. 201, 206 note 5, 208 note 6; *Radio Officers v. Labor Board,* 347 U.S. 17, 37 note 35; *United States v. Penn Foundry Co.,* 337 U.S. 198, 205 note 1; *Connecticut Light & Power Co. v. Palmer,* 305 U.S. 493, 496-497; *General Talking Pictures v. Western Electric Co.,* 304 U.S. 175, 177-178.

Review of the fundamental basis of the judgment below is presented in its full and appropriate context only in the Petition for Certiorari which the Respondent herein has filed in No. 358, present Term, praying that the judgment below be reversed with direction to review the merits of the long-standing controversy between the parties as presented by the record and determined by the judgment of the District Court adjudicating both suit and counterclaim.

In all the circumstances, if a writ of certiorari be deemed appropriate on the instant petition, the writ should be limited to the issue of "case or controversy" underlying the judgment below, so that review by this Court on the

respective petitions of the parties (in Nos. 357 and 358) may eventuate in a directive to the Court of Appeals to resolve the controversy between the parties on the merits. See *Land v. Dollar*, 330 U.S. 731, 739; *Protective Committee* v. *Securities Exchange Commission*, 346 U.S. 810, 346 U.S. 521; *Partmar v. Paramount Pictures Corp.*, 345 U.S. 963, 347 U.S. 89; *cf. Altvater v. Freeman*, 319 U.S. 359, 363-366.

II.

ASSUMING THAT THE COURT OF APPEALS IS DEEMED TO HAVE PASSED UPON THE MERITS, THE JUDGMENT BELOW, INSOFAR AS IT SET ASIDE THE MONEY JUDGMENT AWARDED PETITIONERS BY THE DISTRICT COURT UNDER THE COUNTERCLAIM, IS SUSTAINED BY THE CORRECT CONSTRUCTION OF THE STATUTORY EXEMPTIONS UNDER APPLICABLE DECISIONS OF THIS AND OTHER COURTS; AND THERE IS NO EXISTING CONFLICT OR UNCERTAINTY AMONG THE CIRCUITS ON THESE ISSUES.

Respondent vigorously disagrees with the *dicta* of the Court of Appeals that employment relations in agriculture are beyond the constitutional power of Congress (Pet. App., pp. 99, 102-103). In the proceedings below, counsel for both parties, as well as counsel for the Department of Labor (which appeared *amicus curiae*), separately and independently assumed in trial and argument that all the employees involved (other than those engaged in making dwelling repairs and maintaining related domestic facilities) were engaged in the production of goods for commerce.[8] That assumption was made in good

[8] Respondent contended that the Petitioners engaged in making dwelling repairs and maintaining related domestic facilities were not engaged in commerce or in the production of goods for commerce, within the meaning of the Act (R. 11-12). The District Court's conclusion to the contrary (Pet. App., pp. 63-77) is op-

faith by the respective parties and was consistent with the applicable decisions of this Court. See *Farmers Irrigation Co. v. McComb*, 337 U.S. 755, 759. All parties rightly recognized that the constitutional power of Congress under the commerce clause reached the production of agricultural commodities destined for interstate movement. See *Wickard v. Filburn*, 317 U.S. 111, 118; *Santa Cruz Fruit Packing Co. v. Labor Board*, 303 U.S. 453; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219, 236-237.

The actual controversy between the parties, as presented by the record, briefs, and oral argument, revolved

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posed by all the precedents involving employees in comparable work (*Wilson v. R.F.C.*, 158 F. (2d) 564 (C.C.A. 5), *cert. den.* 331 U.S. 810; *Morris v. Beaumont Mfg. Co.*, 84 F. Supp. 909 (W.D. S.C.); *Coomer v. Durham*, 93 F. Supp. 526 (W.D.Va.)), and also by the view of the court below (Pet. App., pp. 93-95). In this statute Congress "plainly indicated its purpose to leave local business to the protection of the States" (*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 570; *Higgins v. Carr Bros. Co.*, 317 U.S. 572, 574; *S. Rep. 884*, Committee on Education and Labor, 75th Cong. 1st Sess., p. 5); and did not exhaust its constitutional power over commerce. *10 East 40th Street Bldg., Inc. v. Callus*, 325 U.S. 578, 579; *McLeod v. Threlkeld*, 319 U.S. 491, 493. The Hawaiian legislature has imposed its own wage and hour requirements with respect to these services. *Revised Laws of Hawaii*, 1945, Title 9, Chapter 75, Secs. 4351-4366.

Contrary to the findings or suggestions of the District Court (Pet. App., pp. 73-74), occupancy of the houses involved was optional with the Petitioners and all other employees (R. 120, 121, 428-429, 430, 433; See also R. 601); and there is no evidence to show that the making of dwelling repairs and the maintenance of related domestic facilities were necessary to Respondent's production operations, or that such operations were any more efficient because the employees did live on the plantation, or that those employees living off the plantation were any less efficient than those living on the plantation. Petitioners were employed on houses and facilities which were not themselves produced for or shipped in interstate commerce, nor were they used in or devoted to the production of goods for interstate commerce. They merely "serve[d] the needs" of the employees, as the parties stipulated (R. 118), when their occupants were not engaged in such production at all.

around the construction of the Act rather than the constitutional power of Congress over agricultural employment.

Respondent had contended below, and the Court of Appeals' *dicta* specifically agreed, that all the employment here involved was exempt from the Act in view of Sections 3(f) and 13(a)(6). *Supra*, p. 7. Respondent respectfully submits that the judgment below, insofar as it set aside the money judgment awarded Petitioners by the District Court under the counterclaim, is sustained by the correct construction of this broad agricultural exemption, and by the year-round exemption of sugarcane processing in Section 7(c). "In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason". See *Brown v. Allen*, 344 U.S. 443, 459; *Walling v. General Industries*, 330 U.S. 545, 547 and cases cited; *Stern and Gressman, Supreme Court Practice* (2d ed.) p. 220.

1. *Agricultural Exemption*

"Employment in agriculture is probably the most far reaching" of the exemptions in the Act. *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 612.

The statutory definition of "agriculture" (Section 3(f)) is divided into two distinct parts. The first part is "farming in all its branches and among other things includes the cultivation and tillage of the soil, . . . the production, cultivation, growing, and harvesting of any agricultural . . . commodities . . .". See *Farmers Irrigation Co. v. McComb*, 337 U.S. 755 at 762. The second distinct part of the statutory definition of "agriculture" includes "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming oper-

ations, including preparation for market, delivery to storage or to market or to carriers for transportation to market". This part of the definition embraces "practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm". *Id.*, 337 U.S. at 763.

The court below correctly concluded that Respondent was a "farmer" conducting the farming operations enumerated in the statutory definition; and that Petitioners all worked on Respondent's own plantation, i.e., its farm[9] (Pet. App., pp. 91-93) during the work-weeks in question.

The Court of Appeals rightly disagreed (Pet. App., p. 91, note 16) with the District Court's assertion that Respondent was engaged in a number of separate and distinct "enterprises" in which Respondent had assumed different functions of "farmer", "carrier", "manufacturer", "shipper" and "operator of village communities" (Pet. App., p. 44). Functionally, all such tasks were similar to the activities conducted by vast numbers of wheat farmers, cotton farmers, fruit and vegetable farmers, among many others, in the continental United States. Every "farmer" is a "carrier" or "shipper" in the sense that

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[9] "Farm" is defined in Webster's New International Dictionary, Unabridged Edition (2d. ed.) 1951, p. 919 as: ". . . a piece of land held under lease for cultivation; hence, any tract of land (whether consisting of one or more parcels) devoted to agricultural purposes, generally under the management of a tenant or the owner; any parcel or group of parcels of land cultivated as a unit". Moreover the Secretary of Agriculture has determined that "In the case of the Territory of Hawaii, a farm means all land which is farmed by a producer, or group of producers, as a single farming unit, with cropping practices, work stock, equipment, labor, and management substantially separate from that of any other such unit". *Determination of a Farm, etc., for the Territory of Hawaii*, made by the Secretary of Agriculture under the Sugar Act of 1937 (Code of Federal Regulations, Title 7, Ch. VIII, Pt. 802, §802.30 (2 F.R. 2108)). Respondent's plantation meets these definitions (R. 35-36).

(i) he transports his products from the fields to storage, to market, to a processor, or to a carrier for transportation to market, (ii) he transports from one part of the farm to another agricultural supplies and agricultural equipment, and (iii) he sends his trucks to a nearby town and hauls back necessary farm supplies and equipment. Moreover, every farmer is a "manufacturer" to the extent to which he transforms the product he grows into marketable condition. Many fruit and vegetable farmers can or pack their own fruits or vegetables; many cotton farmers gin their own cotton; and many dairy farmers process their own milk into butter and cheese. All of this is done preparatory to marketing. Also practically every farmer maintains and repairs his farm implements, machinery, equipment, farm buildings and grounds, trucks, and other hauling facilities (including the field roads on the farm), and all other tools used in the farm operation.

This all-embracing scope of the "agriculture" exemption is fully borne out by its legislative history. Senator Black, Chairman of the Senate Committee on Education and Labor and in charge of the bill that became the Fair Labor Standards Act, stated that bottling milk, packing apples, ginning cotton, slaughtering and preparing hogs for market, and *processing sugar cane into raw sugar or syrup*—all highly industrialized operations—were intended to be exempt if such operations were performed by a farmer upon his own produce. 81 Cong. Rec. 7656, 7657, 7658, 7659. Congress made this doubly clear by adopting Senator McGill's amendment providing that the agricultural exemption should apply not only to practices ordinarily performed by a *farmer* as an incident to his farming operations, but also to practices performed *on a farm* as an incident to such farming operations. 81 Cong. Rec. 7888. His amendment further added to the exemption the words "delivery to market". The stated purpose of the McGill amendment was to exempt all

kinds of work done on a farm so long as it was incidental to agricultural purposes and was preparatory to marketing the field crop, and all kinds of labor performed in connection with delivery to market of agricultural products. 81 Cong. Rec., pp. 7888, 7927, 7928.[10]

No distinction was drawn by Congress between "large" or "small" farms or between "hand labor" or "mechanized" farms. *Cf. Labor Board v. Campbell*, 159 F.(2d) 184, 187 (C.C.A. 5). Respondent's field operations are no less mechanized than its processing or hauling operations (R. 57, 115); and throughout American agriculture, growing operations are commonly integrated with processing operations. Congress legislated with full knowledge of the technological advances in American agriculture in the generation preceding enactment of the Act.[11]

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[10] The legislative history shows that Congress started with a very broad, comprehensive definition of agriculture, and that such definition at every stage of its consideration by one or the other of the houses of Congress, as the bill worked its way through to passage, was made more and more all-inclusive. S. Rep. 884, 75th Cong., 1st Sess., p. 6; 81 Cong. Rec. 7648; H. Rep. 1452, 75th Cong., 1st Sess., pp. 4-5, 11; H. Rep. 2182, 75th Cong., 3d Sess., p. 2; 83 Cong. Rec. 9162-9163, 9253-9254. Without the broad definition of "agriculture" which was written into the bill, it is a reasonable conclusion from the legislative history that the bill would not have been enacted into law (83 Cong. Rec. 7393, 9257).

[11] "Much of the trend toward larger farms, as shown by the distribution of farms by size for the various censuses, has been due to the consolidation of farms into larger operating units made possible by increased mechanization." 2 *U.S. Census of Agriculture* (1950) c. 10, p. 772; see also c. 3, pp. 198, 200. Farms or plantations the size of Respondent's are not rare in the United States and its territories and possessions; the last available census disclosed more than 7,100 farms with 10,000 acres or more. 2 *U.S. Census of Agriculture* (1950) c. 10, p. 774, Table 4. Moreover, Congress has repeatedly declined to deny exemption to so-called "mechanized" or "industrialized" agriculture, notwithstanding arguments presented on behalf of Hawaiian plantation employees by the union representing Petitioners (R. 119, 120).

The foregoing demonstrates that the "agriculture" exemption embraces *all* the tasks performed by Petitioners in any given workweek in question. The statutory language clearly establishes that the agriculture exemption includes all operations performed by the farmer or on the farm, as an indispensable incident to or in conjunction with the farming operations, up to and including the farmer's disposal of his product. The exemption thus embraces all of Petitioners' activities in issue, such as (i) transporting cane to the mill (R. 205-206), (ii) hauling supplies and laborers to and from the fields (R. 235-239, 248-256, 279-283), (iii) repairing and maintaining field implements (R. 191-204) and hauling equipment (R. 198-201, 206-212) necessary to the continued functioning of the field operations and of the operations involved in delivering the cane to the mill, (iv) processing the cane at the mill into raw sugar and molasses (R. 310-317, 216-220), (v) keeping the mill equipment in good repair (e.g. R. 310-317, 212-220, 223-226; see also R. 94), and (vi) delivering raw sugar to the sugar warehouse for temporary storage and shipping same (R. 317-318)[12].

Hearings on Fair Labor Standards Act Amendments of 1949, Senate Committee on Labor and Public Welfare, 81st Cong., 1st Sess., pp. 972-977, 979-981; *Hearings on S. 2386* (among other bills), Committee on Labor and Public Welfare, 80th Cong., 2d Sess., pp. 317-334; *Hearings on S. 1349*, Committee on Education and Labor, 79th Cong., 1st Sess., pp. 1048-1070.

[12] The Court of Appeals rightly concluded that the agriculture exemption also embraced the Petitioners engaged in making dwelling repairs and maintaining related domestic facilities, assuming that such activities constituted the production of goods for commerce. (Pet. App., p. 95). Coverage under Section 3(j) required that the activities be "necessary" to the production and processing of Respondent's sugarcane. Exemption under Section 3(f) required only that the activities be carried on by Respondent as "an incident to or in conjunction with" its farming operations. If, contrary to Respondent's contention, such activities were covered by Section 3 (j), they were necessarily exempt under Section 3(f) when carried out on "a farm" by a farmer's own employees.

Specifically, the activities of Petitioners in hauling perishable sugar cane from the field to the mill on Respondent's narrow gauge railroad—all on Respondent's plantation—were merely part of the "gathering in" of the sugar crops embraced in the term "harvesting"[13] (Pet. App., p. 90). It is irrelevant that such hauling took place by narrow gauge railroad rather than by truck or some other medium. See opinion of court below on prior appeal; Appendix to Petition in No. 358, present Term, p. 110.

Again, in view of the necessity of processing the cane into raw sugar within a few hours after it is cut (*supra*, p. 5), Petitioners' employment in connection with Respondent's mill was likewise embraced in "harvesting" (Pet. App., p. 90), or in "practices . . . incident to or in conjunction with" farming. Such "processing" on the plantation is obviously distinguishable from the refining operations referred to in the Petition (pp. 3, 9), which are conducted on the mainland on a non-perishable product by a cooperative none of whose employees is here involved (Pet. App., pp. 86-87).

It is immaterial that Respondent's processing, hauling and repair shop activities did not take place on areas allotted to the growing of sugar cane. Field roads, barns, silos, wells and many other improvements, commonly found on farms, are also located on areas separate from the fields where the crops are grown, but the term "farm" has never been deemed to exclude the locations of such improvements.

The foregoing analysis is in full harmony with this Court's decision in *Farmers Irrigation Co. v. McComb*, 337 U.S. 755. After referring to the two distinct parts

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[13] *Webster's New International Dictionary*, Unabridged Edition (1951 ed.) p. 1142; *College Standard Dictionary*, Funk & Wagnalls (1943) p. 526.

of the definition of "agriculture", the Court there said with respect to the work of the cooperative irrigation company involved (337 U.S. at 766):

> ". . . coming to the second branch of the definition of agriculture . . . it does constitute a practice performed as an incident to or in conjunction with farming. If the Act exempted all such practices, the company would be exempt. But the exemption is limited. Such practices are exempt only if they are performed by a farmer or on a farm.[15]
>
> "[15] Although not relevant here, there is the additional requirement that the practices be incidental to 'such' farming. *Thus, processing on a farm of commodities produced by other farmers is incidental to or in conjunction with the farming operation of the other farmers* and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done. Such processing is, therefore, not within the definition of agriculture. Bowie v. Gonzalez, 1 Cir., 1941, 117 F.(2d) 11". [Emphasis supplied]

The Court thus emphasized that processing on a farm of farm commodities is incidental to or in conjunction with the farming operation by which the commodities are produced. And where, as here, such processing is performed on a farm by that same farmer's employees on commodities produced by that farmer on that farm, such processing is clearly incidental to or in conjunction with the farming operation of that farmer, and therefore comes within the second branch of the definition of "agriculture". Furthermore, the rule applicable to processing applies equally to all other activities of Respondent here involved.

Respondent's operations are thus wholly distinguishable from those of the Farmers Irrigation Company, which was not a farmer, performed no operations on a farm, and was "a separate and self-contained activity" in which workers "are employed by the company, not by the farmers who own the company". 337 U.S. at 768, 760-762. See also

Bowie v. Gonzalez, 117 F.(2d) 11 (C.C.A. 1) (employees of a cooperative sugar "centrale" in Puerto Rico engaged in transporting and processing sugar cane grown by various plantations).

Any conflict between the First and Ninth Circuits, as suggested in the Petition (pp. 21-27), has been resolved in the *Farmers Irrigation* case, *supra*. There was and is no actual conflict, however, since the First Circuit decisions themselves recognize that the hauling, handling and processing by a farmer exclusively of his own produce on his own farm by his own employees are exempt under Section 3(f),—unlike the activities of a separately organized cooperative. See *Puerto Rico Tobacco Marketing Coop. Ass'n. v. McComb*, 181 F.(2d) 697, 701; *Vives v. Serralles*, 145 F.(2d) 552, 553 (exemption held applicable to a group of a farmer's employees working on the farm, transporting to the mill thereon cane grown thereon).[14]

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[14] The views of the Department of Labor, upon which Petitioners rely (Pet., pp. 27-28), represent a sharp departure from principles long followed by the Department. See *Interpretative Bulletin No. 14*, U.S. Department of Labor, issued August, 1939, (3 C.C.H. Labor Law Reporter, ¶24,488), ¶¶10(b), (c), (d), (e), and (f) and ¶12; *Hearings on S. 1349*, Comm. on Education & Labor, 79th Cong., 1st Sess., p. 236; *Hearings on H.R. 2033*, Comm. on Education & Labor, 81st Cong., 1st Sess., pp. 79, 97. In these circumstances the Department's altered views are entitled to no weight (*Walling v. Halliburton*, 331 U.S. 17, 25-26; *Miller Hatcheries v. Boyer*, 131 F.(2d) 283 (C.C.A. 8); *cf U.S. v. American Trucking Ass'ns., Inc.*, 310 U.S. 534, 549), particularly since they are inconsistent with the language of the exemption provision, its legislative history, the case law, and with the Department's continued recognition of the exemption of processing of other commodities such as fruit packing and canning, canning dairy products, cotton ginning and tobacco stemming, which are equally industrialized. *Skidmore v. Swift*, 323 U.S. 134, 140; *Jewell Ridge Coal Corp. v. Local No. 6167*, 325 U.S. 161, 169. Furthermore, despite frequent inspections of Hawaiian sugar plantations to check on compliance with the Act through the years, the Department of Labor has never sought to enforce the overtime provisions of the Act with respect to employees of such sugar plantations.

2. *Processing Exemption*

The Petitioners were also exempt from the overtime provisions of the Act under Section 7(c), when they were engaged in hauling sugar cane from the fields to the mill on Respondent's fixed rail track, grinding such sugar cane into raw sugar and molasses, temporarily storing, loading and shipping such raw sugar and molasses, repairing, maintaining and servicing hauling equipment and facilities and mill equipment, and in any other incidental operations necessary and indispensable to the foregoing.

Petitioners and Respondent were engaged in just two things: producing sugar cane, and processing that cane into raw sugar and molasses.

Section 7(c) applies to a farmer who processes his own crops as much as to a processor who processes only the crops grown by others.[19] The language, insofar as relevant, exempts, without time limit, all employees in "any place of employment" where their employer is "engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into sirup". When the particular exemption in §7(c), as here, refers to an entire

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when engaged in activities such as those of Petitioners. To the contrary, in administering the Act, officials of the Department have always treated such employees as exempt.

[19] The court below also recognized that the agriculture exemption in §13(a)(6) and the processing exemption in §7(c) overlap in many significant respects (Pet. App., p. 84, note 4). The Department of Labor has also repeatedly recognized such overlapping. Cf. ¶10(b) of *Interpretative Bulletin No. 14* with ¶¶15-21 thereof. See also WHM 35:754-755. The two exemptions overlap because §13(a)(6) is an exemption from both the wage and hour provisions of the Act, while §7(c) is an exemption from the hour provisions alone. Congress intended that if a farmer processes his own crops, such processing should be wholly exempt under §13(a)(6). On the other hand, if a person engages in the business of processing crops of others as well as his own crops, such person was to enjoy only the more limited §7(c) exemption in that connection.

industry, the exemption applies to all operations which are functionally necessary and indispensable to that industry even though performed in several separate buildings. *Heaburg v. Independent Oil Mill, Inc.*, 46 F. Supp. 751 (W.D. Tenn.); *Abram v. San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S.D. Calif.).

Each of Petitioner's processing activities in issue was necessary and indispensable to the processing of the sugar cane; *e.g.*, the production of steam and power for use in performing the processing operations, the repair and maintenance of the mill and its equipment (in the adjoining repair shops as well as in the mill), the storage of supplies for the mill, laboratory work for the mill, and the hauling of raw materials, i.e., the sugar cane, to the mill. *E.g.*, R. 85-86, 90, 205-206, 212-220, 223-226, 227-231, 243-248, 266-273, 286-288, 318-319.

Furthermore, the term "place of employment" as used in Section 7(c) has always been held to include the roads and railways over which raw materials are transported to the processing plant and finished products away from it, as well as to include the several separate buildings in which the processing operation and other incidental operations necessary and indispensable thereto are carried on, if in fact the employer conducts such operations in several buildings. See cases and administrative interpretations referred to *infra*, p. 22. The term "place of employment" cannot mean simply a single building, regardless of the essential requirements of the operation.

Thus, Petitioners engaged in hauling sugar cane from the fields to the mill were working in the "place of employment" where Respondent was engaged "in the processing of . . . sugarcane". And similarly other Petitioners, such as those who repaired the hauling and process-

ing facilities, stored the Respondent's supplies, or did laboratory or office work, were working in such "place of employment". The buildings in which they worked, including the mill, service shops, storage places for Respondent's supplies, and other buildings, were located in a small, compact and contiguous area of the plantation (R. 38, 721, 723). All the repair, laboratory, warehouse and shipping activities of Respondent took place within 300 feet of the mill building proper (R. 94 and 723).[16]

The foregoing conclusions are confirmed by the Department of Labor's interpretations. *Interpretative Bulletin No. 14*, ¶¶ 14, 18, 22; WHM 35:551-555, 763, 769, 770-771, 772-773; *3 C.C.H. Labor Law Reporter*, ¶¶ 25,250.255, and 25,250.32; statement of Secretary of Labor at *Hearings on S. 2386 et al*, U. S. Sen. Comm. on Labor & Public Welfare, 80th Cong. 2d Sess., p. 183.[17] Any contrary views expressed by the Department in its *amicus* brief below are completely novel and contrary to the positions which the Department of labor has taken from the beginning under the Act.[18]

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[16] See *Calaf v. Gonzalez*, 127 F.(2d) 934, 936-937 (C.C.A. 1); *Bowie v. Gonzalez*, 117 F.(2d) 11, 17, 18-19 (C.C.A. 1); *Byus v. Traders Compress*, 59 F. Supp. 18 (W.D. Okla.); *Walling v. McCracken County Peach Growers*, 50 F. Supp. 900 (W.D. Ky.).

[17] The Section 7(c) exemption was also applicable to the Petitioners when engaged in making dwelling repairs and maintaining related domestic facilities, assuming that such activities constituted the production of goods for commerce. The Department of Labor has said that the Section 7(c) exemption applies not only to those employees processing sugarcane, but also to those employees whose operations are "a necessary incident" to sugarcane processing and who work in those portions of the premises devoted to sugarcane processing. WHM 35:551. If the Petitioners are deemed necessary to the production of raw sugar for commerce when engaged in these activities on the plantation, their operations were likewise "a necessary incident" to the processing of sugarcane on the same plantation for the same farmer.

[18] Where in the same workweek a Petitioner performed work that was not sufficiently close to commerce or to the production of goods for commerce to be considered covered by the Act at all

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ prayed should be denied.

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(e.g. work with respect to Respondent's dwelling houses or related domestic facilities), and also performed work that was exempt under Section 13(a)(6) or Section 7(c), he was obviously excluded from the overtime provisions of the Act. *Fitzgerald v. Kroger Grocery*, 45 F. Supp. 812 (D. Kans. 1942). The Department of Labor is in accord. WHM 35:768. The same rule applies where a Petitioner worked part of the workweek in an activity deemed exempt under Section 13(a)(6) and the remainder in an activity deemed exempt under Section 7(c). 3 *CCH Labor Law Reporter*, ¶24,105.27. Moreover, assuming that any of the activities of Petitioners was not exempt under either Section 13(a)(6) or Section 7(c), we submit that each Petitioner was nevertheless exempt in any workweek in which he did not engage in non-exempt activities for a substantial part of his time. In the case of many other exemption provisions in the Act the Department of Labor has allowed a tolerance of non-exempt work ranging from 20% to 49.9%. *E.g.*, 3 *CCH Labor Law Reporter* ¶23,301.04(b) (local retailing), ¶25,260.05 and 25,260.34 (local newspapers).

APPENDIX

ACTIVITIES ENGAGED IN BY EACH PETITIONER

1. *Field work and repair and maintenance of field equipment*: (i) preparation of land for planting, planting, ratooning, cultivation, fertilizing, irrigation, harvesting, and maintenance of field roads (Petitioners Maneja, Asuncion, Hayashi, K. Okouchi, Watanabe (R. 191-204) and Petitioner Crisostomo (R. 279-283)); (ii) repair, servicing, and maintenance of field equipment and implements, such as tractors, tractor auxiliary implements, caneloading machines, and pumps and other irrigation equipment (Petitioners last mentioned and also Petitioners Ezawa (R. 231-235), Reyher (R. 239-243), A. Robello (R. 273-276), Tanaka (R. 227-231), Takata (R. 243-248), Hironaka (R. 266-273), Yamada (R. 277-278), and Sunahara (R. 223-226)).

2. *Hauling and repair and maintenance of hauling equipment*: (i) hauling by narrow gauge railroad of sugar cane from fields to mill (Petitioner Holmberg (R. 205-206); (ii) hauling by truck on field roads of laborers and field supplies and equipment used for planting, ultivation and harvesting (Petitioners Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)); (iii) miscellaneous hauling such as hauling by truck of laborers, supplies, and equipment to different places on plantation (Petitioners Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)) (some of this latter type of hauling consisted of hauling from off the plantation to places on the plantation); (iv) repair, servicing, and maintenance of hauling equipment and facilities such as cane cars, locomotives, trucks, and the plantation railroad, including portable tracks (Petitioners K. Okouchi (R. 198-204), Holmberg (R. 205-206), Faria (R. 206-208), Sera (R. 208-210), T. Okouchi (R. 210-212), Claunan (R. 220-

223), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), Mori (R. 264-265), Hironaka (R. 266-273), and A. Robello (R. 273-276)).

3. *Sugar Cane Processing and Repair and Maintenance of Processing Equipment*: (i) Processing of sugar cane at mill and temporary storage, loading, and shipment of raw sugar and molasses (Petitioner's Hernandez, Dumlao, Kondo, Cumlat, Lazo, and Kubo (R. 310-317); Carrit and S. Robello (R. 216-220); and Hamamoto (R. 317-318)); (ii) repair, servicing, and maintenance of mill and its equipment (Petitioners last mentioned and also Petitioners Oato (R. 212-216), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), and Hironaka (R. 266-273)).

4. *The making of concrete irrigation flumes*, water supply pipe, blocks, and other concrete products required for use on the plantation (Petitioner Tsutsai (R. 257-258)).

5. *Storage of supplies and equipment* for field, hauling, mill, and repair activities of Respondent (Petitioner Yack Chun Lee (R. 318-319)).

6. *Laboratory work* for (i) field operations of Respondent (Petitioner Pacheco (R. 285-286)) and for (ii) hauling, processing, and activities referred to in "8", *infra* (Petitioner Fujiwara (R. 286-288)).

7. *Office work* (Petitioner Sakaguchi (R. 319-320)).

8. *Repair and maintenance of Respondent's dwelling houses* and the furnishing, maintaining, repairing, or servicing of related domestic services or facilities to or for the lessees of such dwelling houses (Petitioners Sakai (R. 256-257), Kashiwabara (R. 259-263), Mori (R. 264-265), Yamada (R. 277-278), Fernandez (R. 284), Crisostomo (R. 279-283), Oato (R. 212-216), Hironaka (R. 266-273), Guigui (R. 235-239), and Vierra (R. 248-256)).

Certain Petitioners performed work in only one group of activities in every workweek and are therefore listed only in that group. Other Petitioners who are listed in several categories performed one group of activities exclusively in some workweeks, but in other workweeks performed a substantial amount of work in two or more groups of activities. Still other Petitioners appearing in several groups did a substantial amount of work in many workweeks which fell into several groups, and in no workweek did work that fell into one group exclusively. In various instances Petitioners who did only minor amounts of work within a particular group of activities are not listed above as within the group. Complete information as to the work done by all of the Petitioners within the various groups appears in the District Court's findings of fact (R. 190 *et seq.*, 308 *et seq.*).